

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Application 31257
Occidental Community Services District

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Russian River Underflow Tributary to the Pacific Ocean
COUNTY: Sonoma

WHEREAS:

1. Occidental Community Services District filed Application 31257 with the State Water Resources Control Board (State Water Board) on December 13, 2001. Application 31257 requests direct diversion of 0.16 cubic feet per second (cfs) year-round, not to exceed 65 acre feet per annum, from the Russian River for municipal and fire protection uses.
2. The State Water Board has determined that there is unappropriated water available to supply Application 31257. During the period from July 1 through October 31 water is available from the 10,000 acre-foot reservation of water established by State Water Resources Control Board Decisions 1030 and 1610. Division of Water Rights (Division) staff prepared a water availability analysis on April 9, 2008, documenting the availability of water during the period from November 1 through June 30.
3. The water will be diverted and used without injury to any lawful user of water. The Division issued a public notice of Application 31257 on September 27, 2002. Based on the water availability analysis, water is available to serve this application without injury to prior rights. All protests to approval of the application on the basis of injury to prior rights have been resolved. The permit contains conditions to address potential injury to prior rights.
4. Water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses. State Water Board Decisions 1030 and 1610 established minimum flow requirements for the Russian River. These minimum flow requirements are implemented through terms contained in Permits 12947A, 12949, 12950 and 16596, which are held by the Sonoma County Water Agency (SCWA). The minimum flow requirements were established, in part, to protect instream beneficial uses including fish, wildlife, and recreation. Unappropriated water is available for Application 31257 and diversion of water under any permit issued pursuant to Application 31257 will not cause flow in the Russian River to drop below levels established for the protection of instream beneficial uses. The permit issued pursuant to Application 31257 contains a condition requiring Permittee to cease diverting water between November 1 and June 30 when flow in the Russian River is less than 140 cfs at the United States Geological Survey gage near Guerneville, CA. This will prevent Permittee from diverting water when SCWA is releasing water to maintain minimum flows in the Russian River between November 1 and June 30.

5. Occidental Community Services District, as lead agency, adopted a Mitigated Negative Declaration (MND) and made findings in compliance with the California Environmental Quality Act (CEQA). Occidental Community Services District filed a Notice of Determination for the project on April 18, 2001.

The State Water Board, as responsible agency, is required to consider the MND and reach its own conclusions on whether and how to approve Application 31257. The MND lists the potential adverse impacts of the project as being less than significant with mitigation measures incorporated. The MND identified potentially significant impacts on air quality, biological resources, noise, public services, utilities and service systems, and cultural resources. The Occidental Community Services District found that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent.

The State Water Board finds that changes or mitigation measures have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effects identified in the MND prepared for the project. Mitigation measures for this project are within the responsibility of the Occidental Community Services District, not the State Water Board, and have been or should be adopted.

The State Water Board, having reviewed and considered the information contained in the MND, finds that no additional mitigation measures within the responsibility of the State Water Board are available for the identified environmental impacts.

6. The applicant requested to divert 65 acre-feet per annum for municipal use and fire protection. The intended uses are beneficial. Pursuant to Water Code section 100, waste or unreasonable use of water should be prevented, and conservation of water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. Consistent with direction provided in Water Code section 100, the permit issued pursuant to Application 31257 contains conditions requiring: (1) Permittee to incorporate conservation pricing into its rate structure in order to provide its customers with an economic incentive to conserve water; and (2) submittal of a water conservation status report.

NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 31257, subject to the conditions of the attached permit.

STATE WATER RESOURCES CONTROL BOARD

for James W. Kassel
Victoria A. Whitney, Chief
Division of Water Rights

Dated: **APR 18 2008**

Attachment

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21214

Application 31257 of Occidental Community Services District
 c/o Coastland Civil Engineering, Inc.
 1400 Neotomas Avenue
 Santa Rosa, CA 95405

filed on **December 13, 2001**, has been approved by the State Water Resources Control Board
(State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source: Russian River Underflow _____ _____ _____	Tributary to: Pacific Ocean _____ _____ _____
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within the County of **Sonoma**

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
North 1,932,975 and East 6,272,946	NW¼ of SE¼	7	7N	10W	MD

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Municipal	SE¼ of NE ¼	34	7N	10W	MD	
Fire Protection	NE¼ of SE ¼	34	7N	10W	MD	

The place of use is shown on map filed with the State Water Board.

5. The water appropriated shall be limited to the quantity that can be beneficially used and shall not exceed 0.16 cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 65 acre-feet per year. (0000005A)
6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2021. (0000009)
7. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue. (0000025)
8. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion. (0000022)
9. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the SWRCB concerning availability of water and the protection of beneficial uses of water in the Russian River. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing. (0000080)
10. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the SWRCB, made after notice to interested parties and opportunity for hearing. (0000090A)
11. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division of Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Chief of the Division of Water Rights. (0000215)
12. If human remains are encountered, then the Applicant shall comply with Section 15064.5 (e) (1) of the CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If

the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed.

(0380999)

13. During the period November 1 through June 30, Permittee shall cease diversion of water under this permit whenever the flow in the Russian River measured at U.S.G.S. Gaging Station No. 11467000 near Guerneville is less than 140 cubic feet per second.
(0360800)
14. Permittee shall incorporate conservation pricing into their rate structure either by implementing Best Management Practice #11 Option 1 contained in the California Urban Water Conservation Council's Memorandum of Understanding Regarding Urban Water Conservation in California or an alternative method designed to achieve the same goal. If an alternative method is chosen, Permittee shall submit a plan describing the alternative method for review and approval by the Chief of the Division of Water Rights within 60 days of the date of the permit. Permittee shall implement water conservation pricing by July 1, 2009 or Permittee shall cease diverting water under this permit.
(0410700)
15. Permittee shall prepare a Water Conservation Status Report. The report shall specify the water conservation measures implemented by Permittee, and shall estimate the water savings resulting from conservation measures that have been implemented. The report shall describe conservation measures that will be implemented in the future, provide a time schedule for implementation, and estimate the water conservation that will be achieved through implementation of future conservation measures. The report shall be submitted to the Chief of the Division of Water Rights by July 1, 2009.
(0410700)

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE
SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.
(0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board (State Water Board) until a license is issued.
(0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
(0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead

of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

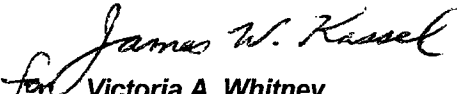
This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney
Division Chief

Dated: APR 18 2008